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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/757,446

01/15/2004

James S. Schutzbach

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EXAMINER

PRETLOW, DEMETRIUS R

ART UNIT

PAPER NUMBER

2863

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

11

Office Action Summary	Application No. 10/757,446	Applicant(s) SCHUTZBACH ET AL.	
	Examiner Demetrius R. Pretlow	Art Unit 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 17-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-7, 17-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a judicial exception; as such, pursuant to the Interim Guidelines on Patent Eligible Subject Matter (MPEP 2106), the claims must have either physical transformation and/or a useful, concrete and tangible result. The claims fail to include transformation from one physical state to another. Although, the claims appear useful and concrete, there does not appear to be a tangible result claimed. Merely determining would not appear to be sufficient to constitute a tangible result, since the outcome of the determining step has not been used in a disclosed practical application nor claimed as made available in such a manner that its usefulness in a disclosed practical application can be realized. As such, the subject matter of the claims is not patent eligible. See <http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm> .

Allowable Subject Matter

The best prior art of record, Pratt (US 4,782,711) teach a method and apparatus for determining mass flow of fluid flowing within a conduit. The conduit is oscillated periodically transverse to the flow therein, and sensors sense the movement of the

Art Unit: 2863

conduit at discrete, spaced locations on the conduit. However Pratt does not teach the following claim language.

If 101 rejections above are overcome, the primary reason for the allowance of claims 1-7 is the inclusion of the method step of determining, by a processor, *a travel time corresponding to the time it takes for the substance to travel between the first location and the second location, using the first data, the second data, and a constant*. It is this step found in each of the claims, as it is claimed in the combination, that has not been found, taught or suggested by the prior art of record which makes these claims allowable over the prior art.

If 101 rejections above are overcome, the primary reason for the allowance of claims 8-13 is the inclusion of the limitations of *wherein the first meter and the second meter are in communication with a processor, and the processor is programmed to derive the travel time of a flow from the first location to the second location using the first flow velocity, the second flow velocities and a constant*. It is these limitations found in each of the claims, as they are claimed in the combination, that has not been found, taught or suggested by the prior art of record which makes these claims allowable over the prior art.

Art Unit: 2863

If 101 rejections above are overcome, the primary reason for the allowance of claims 17-19 is the inclusion of the method step of *collecting a second set of volume flow data at a second location over the plurality of time increments; identifying a first distribution of the first flow volume data over time; identifying a second distribution of the second set of flow volume data over time; identifying a constant corresponding to a relation of the first distribution and the second distribution; and determining a transport time corresponding to transport of a substance from the first location using the first flow velocity, the second flow velocity, and the constant, wherein the determining step does not require additional data*. It is these steps found in each of the claims, as it is claimed in the combination, that has not been found, taught or suggested by the prior art of record which makes these claims allowable over the prior art.

If 101 rejections above are overcome, the primary reason for the allowance of claims 20-23 is the inclusion of the method step of *collecting, using a plurality of upstream flow meters, a plurality of sets of upstream flow volume data, each corresponding to each upstream flow meter over a time period; identifying a plurality of upstream distributions, each corresponding to a set of upstream flow volume data over time; identifying a constant corresponding to a relation of the upstream distributions and the downstream distribution; determining a transport time corresponding to transport of a substance from the upstream location to the downstream location using the first flow velocities, the second flow velocity, and the constant, wherein the determining step does not require additional data*. It is these steps found in each of the claims, as it is claimed in the

Art Unit: 2863

combination, that has not been found, taught or suggested by the prior art of record which makes these claims allowable over the prior art.

Response to Arguments

Applicant's arguments filed January 3, 2007 have been fully considered but they are not persuasive. Applicant argues that the 101 rejections are in error. Claims 1-7, 17-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a judicial exception; as such, pursuant to the Interim Guidelines on Patent Eligible Subject Matter (MPEP 2106), the claims must have either physical transformation and/or a useful, concrete and tangible result. The claims fail to include transformation from one physical state to another. Although, the claims appear useful and concrete, there does not appear to be a tangible result claimed. Merely determining would not appear to be sufficient to constitute a **tangible result**, since the **outcome** of the determining step has not been used in a disclosed practical application nor claimed as made available in such a manner that its usefulness in a disclosed practical application can be realized. As such, the subject matter of the claims is not patent eligible. See

<http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm> .

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2863

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Demetrius R. Pretlow whose telephone number is (571) 272-2278. The examiner can normally be reached on Mon.-Fri. 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Demetrius R. Pretlow

Demetrius R. Pretlow 4/12/07

John Barlow
John Barlow
Supervisory Patent Examiner
Technology Center 2800